same so long as they or either of them should live. (See *Lobdell* v. *Lobdell*, 33 How. Pr. Reps. 347.)

Judgment should be reversed, and a new trial granted.

BOARDMAN, PARKER, and MURRAY, JJ., concurred.

United States District Court, Eastern District of Pennsylvania.

BENNETT'S CASE.

ERBEN'S CASE.

Under the provision of the 14th section of the Bankrupt Law of 2d March 1867, excepting from the operation of the act the property of debtors exempted from levy and sale by the laws of the state, a vested expectant interest of a bankrupt in a sum of money payable at his own death, or at the death of another person, may, in Pennsylvania, be set apart for the use of the bankrupt; so, however, that its appraised present value, estimated as in cases of life insurance, does not exceed $300, or that the bankrupt does not receive more than $300, if the value thus estimated exceeds that amount.

IN *Bennett's Case*, the bankrupt was one of the children of an intestate, whose land having been sold under proceedings in the Orphans' Court of the proper county of the state, a third of the money produced was invested so as to secure to the intestate's widow the receipt of the interest for her life, and to his children the receipt, in equal shares, of the capital at her death. The widow was living when the inventory and appraisement of the bankrupt's effects were made, and at the date of the allotment of what was set apart for his own use under the provisions of the 14th section of the Act of Congress. His expectant vested interest in the share of the capital payable at her death, was appraised at its present value, estimated as in cases of life insurance. The valuation was of less amount than $300. The bankrupt claimed, and the assignee set apart for him, this item of the estate, as excepted from the operation of the proceedings in bankruptcy, by the 14th section of the Act of Congress of 2d March 1867, under the head of property "exempted from levy and sale upon execution or other process or order of court by the laws of the state * * * to an amount not exceeding that allowed by those laws in force in 1864."

In *Erben's Case*, the bankrupt had effected an insurance on his

own life in a sum of money payable at his death to his wife. It was alleged that he had been solvent when the insurance was effected, and that it formed no part of his estate. But he had paid the annual premiums after his insolvency. This insurance had been appraised as part of the assigned estate; and had afterwards been claimed and set apart for the use of himself as exempt under the provisions of the Act of Congress, and those laws of the state upon which the question arose in *Bennett's Case.*

Upon the hearing of these cases in the Court of Bankruptcy, CADWALADER, J., said that in the case of a similar expectant interest in corporeal property, which interest could be levied on and sold under an execution, he would have had no doubt of the applicability of the exemption laws of the state. But the expectant interests here in question could not be sold under an execution. They could not be reached by a creditor in a court of the state, otherwise than by way of attachment execution—a proceeding under which there could be no sale, in the strict sense of the word. In each case, the question of exemption depended, under the Act of Congress, altogether upon the effect of legislation of the state, or depended upon a meaning of words, which was to be determined according to the effect attributable to them by the courts of the state under such legislation.

He therefore asked the assistance of two judges of the courts of the state, Judge STRONG, of the Supreme Court, and Judge HARE, President of the District Court for the City of Philadelphia.

Judges STRONG and HARE sat accordingly as assessors; and heard the questions argued by counsel on 16th September 1868.

I. S. Sharp, for Erben.

Dawes, for Bennett.

Bispham, contrà.

Judges STRONG and HARE, on the 18th of September 1868, expressed their concurrent opinion that the expectant interests in the money payable at the respective deaths of Mrs. Bennett and Mr. Erben, were included in the meaning of the words "property exempted from levy and sale upon execution or other process or order of the court by the laws of the state," and would be ex-

empted under these laws to an amount not exceeding $300 in each case.

CADWALADER, D. J.—The opinion of the learned assessors appears from proceedings of the registers, and of assignees who were lawyers, to coincide with prevalent views of members of the legal profession in the state. I fully concur. In these cases, therefore, the respective exemptions are sustained.

In *Erben's Case* several questions present themselves for consideration, one only of which, by the suggestion of CADWALADER, J., was argued before and decided by the judges. These questions are as follows:—

1st. Was the policy in question the property of *Mr.* or *Mrs.* Erben?

2d. Supposing it to have been *Mr.* Erben's, was it not exempt under the Bankrupt Act by virtue of the Acts of Assembly of Pennsylvania of 9th April 1849 or of 8th April 1859?

3d. If not exempt by virtue of either of these acts was it not exempt by the Act of April 15th 1868?

1st. It is conceded that at the time the policy was taken out Mr. Erben was solvent and so continued for about nine years, during which time he paid all the premiums falling due. (After that time he paid part of them only; the remainder being paid by *Mrs. Erben* out of money *given* to her by friends.) That a man may convey property to his wife whilst he is *solvent, provided* there is *no intention on his part to defraud his creditors*, may be considered as settled in many of the states; and by the decisions of the Supreme Court of the United States it is valid, at least, as to subsequent creditors. See Story's Eq. Jur. §§ 359 (n.), 428; *Posten* v. *Posten*, 4 Whart. 27; *Saxten* v. *Wheaton*, 8 Wheaton 247.

But this being admitted it is not the province of the court, but of the jury, to say whether there is a fraudulent intent: *Chambers* v. *Spencer*, 5 Watts 404, 409.

And this was probably one of the reasons why the court refused to hear argument upon the point until the second question had been disposed of. If the policy, however, once became *vested* in Mrs. Erben it could hardly be contended that the *payment of some of the premiums* by Mr. Erben, after his insolvency, *divested* her interest and *vested* it in him. There may have been a right of action by Mr. Erben's assignee against Mrs. Erben for money paid to her use; and in a judgment obtained against her, perhaps, her interest in the policy could be attached: *Girard Fire Ins. Co.* v. *Fields*, 9 Wright 129; *Mills* v. *Auriol*, 1 Smith's Lead. Cases 910; *Godsall* v. *Boldero*, 2 Id. 292; *Dalby* v. *Ins. Co.*, Id. 297.

2d. Was the policy excepted from the operation of the 14th section of the Bankrupt Act, which gives to the assignee the property and rights of the bankrupt, but excepts from the operation of this section the "household and kitchen furniture * * * and such other property * * as is exempt from levy and sale upon execution or other process, or order of any court, by the laws of the state in which the bankrupt has his domicil at the time of the commencement of the proceedings in bankruptcy to an *amount* not exceeding that allowed by such state exemption laws in force in the year 1864." The Act of Assembly of Pennsylvania of April 9th

1849 provides "that * * * *property* to the value of $300 * * * of any debtor shall be exempt from levy and sale on execution or by distress for rent." The act then goes on to provide *a manner of appraising the property* which the "debtor may elect to retain." The early decisions of the Supreme Court upon the construction of the term "property" in this act were very strict, and declared "money," among other things, not to be included within it: *Hammer* v. *Frees*, 7 Harris 255 (1852); *Knabb* v. *Drake*, 11 Id. 489 (1854).

It was also said that nothing would come within the terms of the law that did not require or was not susceptible of *appraisement;* it being required that the whole law should be construed together. In 1857, however, the court held that, "Where the real estate of a debtor is seized and sold under a judgment obtained on a mortgage given for the balance of the purchase-money of such real estate, and before the sale the debtor notifies the sheriff that he claims the benefit of the Exemption Law of 1849, and desires to have an appraisement made, such debtor is entitled to the balance of the proceeds after the payment of the mortgage-debt and costs, it not exceeding $300, in preference to judgments obtained for debts contracted since July 4th 1849 (the law having provided that no debts contracted *prior* to that date should be affected by the act). ARMSTRONG, J., remarked, in the opinion of the court delivered by him, that the law "should receive a construction *favorable to the benevolent object of its enactment,*" that being "not only for the benefit of the debtor but for his family:" *Hill* v. *Johnson & Park*, 5 Casey 362.

BLACK, C. J. (in 1852) had said it should be strictly construed because, among other reasons, it was in derogation of the common-law rights of the creditor to take his debtor's property for his claim. On April 14th 1851, the "Widows' Act" was approved, whose language and general purpose was the same as that of the Act of 1849; and in 1860 the Supreme Court held that under that act "the widow of a decedent may elect to take $300 as against the creditors of her husband, out of any *money* or *evidence of debt* belonging to the estate; and in such case there is no necessity for an appraisement:" *Larrison's Appeal*, 12 Casey 130.

It may be noticed, however, that the widow in this case chose *promissory notes*, and *after* selecting them the money for which they called was paid to the executors. But the evident liberal *tendency* of the Supreme Court in construing the law of 1849 seemed insufficient to satisfy the legislature, the early decisions not being yet *overruled*, and they therefore passed the Act of 8th April 1859, which extended to the class of persons named in the Acts of 1849 and 1851, the right to exempt "bank notes, money, stocks, judgments, or other indebtedness to such person." The question then was, in this case, whether the term "property," in the Act of 1849, or the term "indebtedness," in the Act of 1859, included a policy of life insurance.

The court have not given the reasons upon which they decided it to be "property," but it can hardly be doubted that the liberal tendency of the Supreme Court in its late decisions in construing those acts and the evident liberal intent of the legislature, as showed in the Act of 1859, induced them to so extend the term. It has been said that "property" *in a will* includes every species of property, is a *nomen generalissimum*, "and comprehends all earthly possessions:" *Rosetter* v. *Simmons*, 6 S. & R. 455.

Although this would be a very comprehensive definition to give the term in the statute in question, it yet shows how comprehensive a term it may be held to be where the intent is manifested by

concurrent circumstances. It was contended upon argument, also, that the policy was an "indebtedness" within the meaning of the Act of 1859—a *debitum in presenti solvendum in futuro*. It has been held in England that a life policy will pass under a *will* by the term "debentures and debts:" *Lloyd & Gould*, *Cases temp. Sugden* 289–294; Reynolds on Life Insurance 173. And although the Chancellor said he did not wish to be considered as deciding the "abstract point" that a life policy is a "debt," the reasoning is very strong in support of this view.

Many definitions of "debts," too, may be found in the books sufficiently comprehensive to cover a life policy. See Bouvier's Dictionary, *Debt; Gray* v. *Bennett*, 3 Met. 522, 526; 1 Bell Appeal Cases 295.

And the text-books on insurance and on bankrupt law speak of policies of life insurance continually as "debts" and "contingent debts:" Shaw's Ellis on Insurance 299; Cooke's Bankrupt Laws 190.

As was suggested above, it is believed, too, that it would be the subject of an attachment execution: *Lancaster Bank* v. *Stouffer*, 10 Barr 398; *Girard Fire Ins. Co.* v. *Fields*, 9 Wright 129; *Mahon* v. *Kunkle*, 14 Id. 216; *Mills* v. *Auriol*, 1 Smith's Lead. Cases 910.

If this be true, it is a strong circumstance in favor of its exemption as it would seem to be brought within the clause "exempt from levy and sale on execution," which was at *first* said to be necessary, though the late decisions are less strict. But a very important point upon the general subject is whether it is not exempted by the Act of 15th April 1868, which provides that "all policies of life insurance or annuities upon the life of any person which may hereafter mature and which have been or shall be taken out for the benefit of, or *bonâ fide* assigned to the wife of such person * * * shall be vested in such wife * * * full and clear from all claims of the creditors of such person." If, therefore, the *value* of the policy taken out by a husband for the benefit of his wife does not exceed the "amount" which was exempted by the state laws in force in "1864," it would seem that it might be exempted under this later act; even if the title to the policy were vested in the husband at the time he was declared bankrupt. In other words, the state laws exempting property from levy and sale, may be changed with reference to the *articles* exempted if no change is made with reference to the *money value* of the exemption. The difficulty in Mr. Erben's case with reference to this point was, that the Act of 15th April 1868, had been passed *after* he had been declared bankrupt and the title to the policy, if in him at that time, might be considered as at once vested in his assignee so that no subsequent act of the legislature could take it out of him; for the Bankrupt Act provides "That the foregoing exceptions shall operate as a limitation upon the conveyance of the property of the bankrupt to the assignee; and in no case shall the property hereby excepted pass to the assignee, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this act." If the title *had* vested in the assignee, therefore, it would require a *very* liberal construction to hold that it might be taken out of him by a subsequent act of the legislature. I. S. S.